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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

S.S.,

Petitioner,

v.

THE SUPERIOR COURT OF THE CITY
AND COUNTY OF SAN FRANCISCO,

Respondent;

SAN FRANCISCO COUNTY HUMAN
SERVICES AGENCY,

Real Party in Interest.

A128132

(San Francisco County
Super. Ct. No. JD07-3327)

Petitioner S.S. seeks review of a juvenile court order terminating reunification services and scheduling a hearing pursuant to Welfare and Institutions Code¹ section 366.26 for her daughter, N.L. Petitioner contends there is insufficient evidence to support the juvenile court's findings that she has been provided reasonable services and that returning the child to her care would be detrimental. She also asserts the court should have afforded her an additional six months of reunification services. We deny the petition.

FACTUAL AND PROCEDURAL HISTORY

Petitioner is the mother of N.L., a girl born in October 2007. Both petitioner and N.L. tested positive for methadone following the delivery.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

On October 16, 2007, the Agency filed a petition alleging that N.L. came within the jurisdiction of the juvenile court pursuant to section 300, subdivisions (b) and (j), based on allegations the parents were unable to supervise the child adequately and to provide regular care for the child due to the parents' substance abuse and criminal histories. The Agency also alleged there was a substantial risk N.L. would suffer abuse or neglect in light of abuse or neglect suffered by her older siblings. In the initial jurisdiction report, the social worker reported that petitioner had tested positive for methamphetamine, morphine, and cocaine roughly one month before N.L.'s birth, although petitioner had denied using drugs. The social worker also reported that one of petitioner's children had been adopted, two others were in foster care, and the fourth had been raised by relatives. Petitioner had been offered reunification services to deal with her substance abuse issues but had failed to reunify with her older children.

Because neither petitioner nor N.L. tested positive for illegal substances, the social worker did not recommend removing N.L. from petitioner's care. N.L. remained hospitalized for two weeks after her birth due to methadone exposure. Following N.L.'s discharge from the hospital, she remained in petitioner's custody at a family shelter in San Francisco.

In the disposition report filed December 3, 2007, a new social worker assigned to the case documented petitioner's long history of drug abuse, homelessness, and involvement with Child Protective Services concerning her older children. The social worker also reported that, during the latter part of petitioner's pregnancy with N.L., petitioner tested positive for drugs, tampered with drug tests, and refused to take drug tests, according to staff at the methadone maintenance program petitioner was attending. Nonetheless, the Agency recommended that N.L. remain in the custody of petitioner and the alleged father.

The Agency filed an amended juvenile dependency petition on December 10, 2007. The Agency now alleged, among other things, that petitioner and the alleged father failed to seek needed medical attention for N.L. on December 6, 2007, despite being told to do so by a public health nurse. The next morning, N.L. was hospitalized for bronchialitis. The Agency also alleged that petitioner might still be using drugs. Despite the Agency's

recommendation to remove N.L. from the parents' home, the juvenile court released N.L. back to petitioner.

Following a settlement conference to address jurisdictional issues on December 13, 2007, the juvenile court sustained allegations in the amended petition and concluded that N.L. came within the jurisdiction of the juvenile court. The court found that petitioner had a history of substance abuse, that N.L. was born exposed to methadone, that the father had a substance abuse and criminal history, that the parents failed to seek needed medical attention for N.L., and that petitioner had four older children not in her care with whom she had failed to reunify. The court declared N.L. to be a dependent child, placed her with the parents, set a review hearing for June 2008, and required petitioner to complete a drug treatment program, undergo twice-weekly drug testing, and participate in individual therapy.

In a status review report prepared in May 2008, the social worker reported that petitioner and N.L. had lived at a residential drug treatment facility for a little over two months before petitioner transitioned to outpatient treatment in early May. The social worker reported that petitioner had missed 12 drug tests before entering residential treatment but that she had tested regularly after February 28, 2008. Petitioner had failed to participate in individual or couple's counseling despite expressing a willingness to do so. In an addendum to the status review report, the social worker reported that petitioner's attendance at her outpatient treatment program had been sporadic since her initial intake and assessment appointment.

The Agency filed a supplemental section 387 petition on June 26, 2008, in which it sought to remove N.L. from petitioner's care. The Agency cited petitioner's unexcused overnight absences from transitional housing, absences from her outpatient treatment program, a report that petitioner was involved in a car accident in which N.L. was not in a car seat, and reports that the drug dependency court was likely to remove petitioner from its program because of her lack of progress or interest in the program.

On August 18, 2008, the juvenile court sustained the section 387 petition and placed N.L. in foster care. The court found true allegations that petitioner had a history of substance abuse requiring treatment, that her noncompliance with family maintenance

requirements prevented her from being able to properly care for and supervise the minor, and that she was unable to maintain housing due to rule infractions in her transitional housing. At the disposition hearing on September 12, 2008, the court ordered that petitioner comply with twice-weekly random drug testing and complete an inpatient drug treatment program that addressed substance abuse and mental health issues. The court ordered petitioner to continue outpatient treatment until she began inpatient treatment. The court set the matter for a six-month review in December 2008.

In the six-month review report filed December 2, 2008, the social worker reported that petitioner's attendance at her outpatient treatment program had decreased over time and that there had been instances in which petitioner had inappropriate interactions with other group members. Petitioner had also tested positive for alcohol, although the impossibly high alcohol levels in her urine suggested she might be diabetic and not know it. Petitioner had steadfastly refused to enter an inpatient treatment program to focus on both substance abuse and mental health issues. However, after being informed that the Agency would have no choice but to request terminating her services unless she complied with her case plan, petitioner expressed a willingness to enter an inpatient program if "it [was] the only way to get her daughter back." At the time of the December 2008 review, petitioner was living with a new boyfriend, J.C. Following the six-month review hearing on March 19, 2009, the juvenile court ordered six more months of reunification services for petitioner.

The Agency filed a twelve-month review report on June 29, 2009. The new social worker assigned to the case wrote that petitioner was due to have her sixth child in one month. Her boyfriend J.C. was the father. The social worker reported that petitioner had attended outpatient treatment services but had never enrolled in an inpatient program, as she was required to do. According to petitioner, she had tried to enter a program referred to as "Haight Ashbury Residential" but was informed her mental health issues were not severe enough to qualify for that program. The social worker wrote that she had been informed it took petitioner a full year to complete a six- to eight-month outpatient treatment program. Staff at the outpatient program had recommended that petitioner participate in a transitional program but she failed to do so.

In an addendum report filed July 14, 2009, the Agency reported that it had received a referral to investigate allegations of emotional abuse of N.L. by petitioner. When the social worker went to investigate, she saw blood stains on the floor of the home petitioner shared with J.C. J.C. told the social worker that N.L.'s father had come to their home, where he assaulted petitioner and broke windows. The social worker reminded petitioner that she had falsely reported that an unknown person had broken the window. Petitioner conceded she had lied because she did not want to threaten her chances of being reunited with N.L. In addition, petitioner admitted that she and J.C. had engaged in an altercation² and police were called to the home, though no police report was filed.

On August 27, 2009, the social worker filed another addendum report with the court. The report indicated that the foster mother told the Agency N.L. had a cigarette burn near her right eye after returning from a weekend visit with petitioner. Petitioner told the social worker the burn resulted from an accident in which N.L. had run towards petitioner and a cigarette held by petitioner had fallen on N.L.'s eyebrow. The social worker asked petitioner to immediately resume random drug testing but petitioner was "adamant" in refusing to test, claiming the testing agency had reported false positive results in the past. Notwithstanding petitioner's claims the burn resulted from an accident, the Agency still believed the incident demonstrated neglect by petitioner, who had failed to seek medical attention for N.L. The Agency recommended that N.L. remain in foster care and that the court order six more months of reunification services for petitioner.

At the twelve-month review on November 4, 2009, the court ordered N.L. to remain in foster care. In addition, the court ordered the Agency to provide "financial assistance" to petitioner to enable her to travel to San Francisco from Fairfield, where she was then residing. The court also ordered petitioner to engage in outpatient drug treatment services as well as engage in drug testing at the Ashbury Clinic in San Francisco, if no testing were available in Fairfield.

² Petitioner was holding N.L. and wanted to go for a walk with her, but did not know where the stroller was, so she asked J.C. to find it. She sat down on the "tail" of his truck and refused to get up until he found the stroller for her.

In an addendum report filed January 6, 2010, the Agency asked the court to terminate reunification services and set a section 366.26 hearing to determine a permanent plan for N.L. The Agency reported that on December 7, 2009, police had responded to a home where the four-month old baby of petitioner and J.C. had been left with an unrelated caregiver. The caregiver reported that petitioner had left the baby with her two days earlier, had not contacted her, and had not returned to retrieve the child. The caregiver further reported that petitioner had been leaving the baby with her on and off for two months and it was “getting worse.” In addition, the father of the baby, J.C., had told the caregiver that petitioner was doing drugs again and not to return the baby to petitioner. The Agency stated that petitioner had failed to engage in weekly random drug testing, as ordered by the court.

In another addendum report filed with the court on March 1, 2010, the social worker reported that petitioner was homeless. Nevertheless, petitioner had been maintaining consistent and regular visitation with N.L. The social worker documented the services provided to petitioner over the course of the dependency case and petitioner’s failure to comply with the requirements. Specifically, she had been ordered to complete an inpatient drug treatment program but had failed to do so, choosing instead to participate in an outpatient treatment program. Petitioner failed to attend any medical appointments for N.L. or otherwise participate in any medical planning for her daughter. Further, petitioner failed to participate in mental health services provided through the Agency. With regard to substance abuse testing, the social worker documented sporadic and infrequent testing between September 2009 and March 2010, during which time appellant again tested positive for alcohol. Petitioner also failed to follow through on referrals for a psychological evaluation. With regard to participation in outpatient treatment, the social worker reported that petitioner had attended fewer than half of the scheduled sessions over the period August through December 2009, resulting in her being considered not in compliance with program rules. Petitioner had also failed to participate in drug testing or outpatient services regularly despite having been given \$715.50 per month during the period of time she was residing in Fairfield. The Agency continued to recommend terminating reunification services and setting the matter for a selection and implementation hearing.

The court conducted a contested 18-month review hearing on March 16 and 22, 2010. The Agency supervisor assigned to N.L.'s case testified that petitioner had missed the majority of her treatment program's group meetings during the months of August 2009 through January 2010. As of the time of the hearing, petitioner had not participated in the group meetings since late January 2010. The supervisor testified that petitioner had submitted to only 6 out of 18 random drug tests since early November 2009. On a number of occasions, petitioner tested positive for alcohol, although the unusually high test results might have been false positive results as a consequence of possible diabetes. At least one positive test result did not contain the indicia suggesting it was a false positive caused by diabetes. The supervisor testified that petitioner had been given about \$700 a month for three months in order to pay for her transportation so she could participate in services. The supervisor also reported that petitioner's youngest child had been removed from her care in December 2009 after the Agency received reports the child was left for days at a time with a friend, who was unable to contact the parents.

On cross-examination, the supervisor agreed that petitioner had suffered some setbacks beyond her control, such as losing her home and belongings in Fairfield after learning she was paying rent to someone other than the owner of the home in which she was staying. The supervisor also agreed that petitioner had regularly visited N.L. over the prior two year period and had a strong attachment to her. However, the supervisor also testified that visitation notes from an October 2009 visit documented an incident in which petitioner had to be escorted from a visit after calling a staff member a "black bitch" and threatening to kill her. The visiting room staff supervisor wrote that petitioner failed to interact with N.L. during the visit and appeared to be under the influence. Then, in February 2010, staff had to intervene during a supervised visit when petitioner and the father of her youngest child, J.C., got into a verbal fight while petitioner was holding both N.L. and her youngest child.

At the conclusion of the hearing, the court followed the Agency's recommendations. The court found that returning N.L. to petitioner would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. It found by clear and

convincing evidence that the Agency had provided reasonable reunification services to petitioner but that she had made minimal progress with her case plan. The court terminated reunification services and set the matter for a section 366.26 hearing to be held on July 14, 2010. Petitioner timely sought writ review of the court's orders under rule 8.450 of the California Rules of Court.

DISCUSSION

I. *Substantial Evidence Supports the Court's Finding that Returning N.L. to Petitioner Would Be Detrimental to the Child.*

Petitioner contends there is insufficient evidence to support the juvenile court's finding that returning N.L. to her care would be detrimental to the child's physical or emotional well-being. We disagree.

Section 366.22 governs the conduct of 18-month review hearings. Subdivision (a) of that section provides in relevant part as follows: "When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental."

Our review of an order setting a section 366.26 hearing is governed by the substantial evidence standard of review. (See *James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) "In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact." (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) All conflicts must be resolved in favor of the respondent and all legitimate inferences must be

indulged in support of the juvenile court's findings. (*Ibid.*) The party challenging the finding bears the burden of showing there is insufficient evidence to support the juvenile court's finding. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Here, there was ample evidence to support the court's finding that returning N.L. to petitioner would be detrimental to the child's well-being. Petitioner failed to comply with court-ordered services including random drug testing, drug treatment, and mental health services. She refused to follow through with a referral for a psychological evaluation, she remained homeless, and she failed to attend any of N.L.'s medical appointments. During a supervised visit, she threatened to kill a visiting room supervisor while apparently under the influence, and during a February 2010 visit, petitioner and her boyfriend engaged in a verbal altercation that required staff intervention. While in petitioner's care, N.L. suffered a cigarette burn near her eye, with the Agency expressing concern that petitioner had failed to seek medical care for the child. Moreover, petitioner's youngest child had been removed from her care in December 2009 after the four-month old child was left for days at a time with an unrelated caretaker who had no way of contacting petitioner.

Petitioner contends the Agency's burden is not met merely by showing a parent is "less than ideal." She claims she has made progress in court-ordered services and emphasizes that she regularly visited N.L. and has a strong bond with the child. She relies on *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 504-506 (*Rita L.*), in which the court held that a single dirty test for drugs, in light of the facts of the case, did not constitute substantial evidence that returning the child to the mother's custody would create a substantial risk of detriment.

Petitioner's reliance on *Rita L.* is misplaced. There, the mother tested positive for drugs after her adult daughter gave her a Tylenol tablet for her headache, without telling her it was actually a prescription tablet of Tylenol with codeine. (*Rita L., supra*, 128 Cal.App.4th at p. 501.) The mother told the drug testers the following day that she would likely test positive for drugs because she had not realized the Tylenol her daughter gave her contained codeine. She also told her Alcoholics Anonymous sponsor about the incident as soon as she saw her at work. (*Ibid.*) The juvenile court "made very clear that absent the

dirty test, it viewed [the mother] as a veritable superstar of the reunification process and, but for the codeine, would have returned [the child] to her.” (*Id.* at p. 505.) The appellate court held there was insufficient evidence of risk of detriment to the child, reasoning that “the particular dirty test at issue in this case, arising as it did from [the mother’s] ingestion of a single prescription pain killer to combat a headache—in the absence of any prior listing of prescription drug abuse—was simply insufficient to justify the court’s conclusion that [the child] could not safely be returned to her custody.” (*Id.* at p. 506.)

In this case, unlike in *Rita L.*, there was no single isolated incident that was somehow inconsistent with petitioner’s overall efforts to reunify with her child. Instead, she regularly failed to drug test or participate in outpatient services despite being given over \$700 per month to facilitate transportation during a period when she lived outside San Francisco. Petitioner’s failure to participate regularly in services and make progress with her case plan, by itself, supports the court’s finding. Further, incidents that occurred during the period under review—such as the cigarette burn for which petitioner failed to seek medical help, the removal of petitioner’s youngest child from her care, petitioner’s relapse into homelessness, and her problematic supervised visits with N.L. in which staff had to intervene—constitute further evidence supporting a conclusion that N.L. would be at risk of harm if she were returned to her mother’s care. Accordingly, we conclude substantial evidence supports the trial court’s finding that returning N.L. to petitioner’s care would be detrimental to the child’s well-being.

II. *Substantial Evidence Supports the Court’s Finding the Agency Provided Reasonable Services to Petitioner.*

A finding of reasonable reunification services is reviewed for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) Petitioner contends the juvenile court’s finding that the Agency provided reasonable services is not supported by substantial evidence. We are not persuaded.

“The adequacy of reunification plans and the reasonableness of [the agency’s] efforts are judged according to the circumstances of each case. [Citation.]” (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) “The standard is not whether the services

provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Petitioner acknowledges the Agency provided “a great deal of services” to her but nonetheless contends they were “not tailored to meet the family’s unique needs” after the 12-month review. Her primary complaint is that it was unreasonable to expect her to commute over two hours at least twice a week for services when she was caring for a newborn baby.

There is little question but that the Agency offered reasonable services to petitioner tailored to her particular needs. The only question is whether petitioner was effectively denied access to those services because the Agency failed to properly account for the fact petitioner had relocated to Fairfield and was caring for a newborn baby.

The Agency made reasonable efforts to accommodate petitioner’s situation. Petitioner received over \$700 a month for three months to facilitate transportation between Fairfield and San Francisco. While the accommodation may not have been ideal, it was reasonable under the circumstances. Further, there is no indication petitioner sought to receive services in Fairfield, rather than San Francisco, during the time she resided there. Even after she returned to San Francisco and no longer had her youngest child in her care, she still failed to participate regularly in services, belying a claim she would have participated in services but for the transit time and the need to care for her youngest child. We conclude substantial evidence supports the court’s finding that the Agency provided reasonable services to petitioner.

III. The Court Did Not Abuse Its Discretion By Refusing to Order Additional Reunification Services.

Despite receiving over two years of services, petitioner claims the court erred when it failed to order additional services for her. We review the juvenile court’s decision to order additional reunification services under the abuse of discretion standard. (See *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1460.) Here, there was no abuse of discretion.

Section 361.5, subdivision (a)(1)(B) sets forth timelines for the length of time services may be ordered for a child who was under three at the time the court initially removed the child from parental custody. The statute provides: “For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, *but no longer than 12 months from the date the child entered foster care* as defined in Section 361.49 unless the child is returned to the home of the parent or guardian.” (Welf. & Inst. Code, § 361.5, subd. (a)(1)(B), italics added.) The court in this case ordered services beyond these statutory limits. Petitioner’s argument ignores these statutory limits and necessarily fails.

Furthermore, “[a]bsent extraordinary circumstances, the 18-month review hearing constitutes a critical juncture at which ‘the court must return children to their parents and thereby achieve the goal of family preservation or terminate services and proceed to devising a permanent plan for the children.’ [Citations.]” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 596.) At this stage of the dependency case, the focus shifts to the child’s need for permanency and stability. (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1509-1510 (*Denny H.*)) In light of the fact N.L. was under three years of age at the time she was removed from her mother’s care and had been in foster care for over 18 months, the court here had little choice but to terminate services.

Petitioner acknowledges these principles but argues, in effect, that extraordinary circumstances justify a departure from the rule limiting services to 18 months. She claims she became homeless “due to circumstances beyond her control” and that the court should have granted six more months of services.

As the *Denny H.* court observed, “When extraordinary special needs are not at issue, the approach taken in *Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088 makes sense. There, the reviewing court concluded that the juvenile court's extension of services beyond 18-months was an abuse of discretion and in excess of its jurisdiction, as limited by statute. [Citation.]” (*Denny H., supra*, 131 Cal.App.4th at p. 1511.) In *Denny H.*, the court rejected the contention that the father’s

hospitalization for six weeks constituted an external factor that prevented him from participating in his case plan. (*Id.* at p. 1510.) The court contrasted the father’s situation with that in *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787, where the mother was hospitalized for all but five months of the 18-month reunification period. (*Denny H., supra*, at p. 1510.)

Here, reunification services failed not because of factors over which petitioner had no control but because petitioner failed to comply with her case plan requirements, even before she became homeless near the end of the 18-month reunification period. There was no extraordinary circumstance or external factor that prevented petitioner from participating in her case plan. Under the circumstances, the court did not abuse its discretion in refusing to grant further services.

DISPOSITION

The petition for extraordinary relief is denied on the merits. (§ 366.26, subd. (l)(1)(C); *Kowis v. Howard* (1992) 3 Cal.4th 888, 893-895.) Our decision is final immediately as to this court. (Cal. Rules of Court, rules 8.450(i), 8.490(b)(3).)

McGuinness, P.J.

We concur:

Siggins, J.

Jenkins, J.